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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/804,529
Filing Date: March 19, 2004
Appellant(s): CROSBIE ET AL.

James J. Bitetto
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 12, 2008 appealing from the Office action mailed August 15, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 15-20 and 22-23 and 25 are pending, stand rejected and are under appeal. The claims are set forth in the attached Appendix.

Claims 1-14, 21, 24 and 26-44 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,401,624	Nijenhuis	6-2002
701,469	Coath	6-1902
5,743,191	Coslovi	4-1998
1,980,329	Farmer	11-1934
2,190,708	Fowler	2-1940
4,224,880	Hogue	9-1980

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Ground A - Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Coslovi (US 5,743,191) and Coath (US 701,469).

Nijenhuis discloses railway wagon 16 having a portable platform structure similar to that recited in the instant claims, including platform 14, a trolley under the platform including wheels 16, and vertically adjustable suspension system 17, which includes pneumatic means to allow adjustment and positioning of the portable platform. Note for example, lines 35-44, column 6 of Nijenhuis, wherein suspension system 17 is

configured to lift and maintain portable platform 14 to a certain height before wagon 16 comes to a stop at a permanent platform.

Regarding the instant claimed portable platform being self-supporting and independent from the permanent platform, as recited in instant claims 15-18, it is noted that the portable platform of Nijenhuis is capable of self-supporting and independent from permanent platforms that do not have support elements 11 attached thereto. On the other hand, it is noted that support elements 11 of Nijenhuis are provided for added enhancement of vertical stability of the portable platform during loading/unloading of heavy load containers onto the portable platform. However, it certainly would have been obvious to one skilled in the art to choose not to provide such support elements 11 at the permanent platforms for operating with light loads, such that the use of such support elements 11 is not critical for maintaining vertical stability of the portable platforms during loading/unloading of such light loads.

Regarding the instant claim safety fence, it is noted that safety fences provided on railway cars are well known. Note for example, safety fence 110 or 112 of Coslovi. Therefore, it would have been obvious to one skilled in the art to provide a well known safety fence on the railcar of Nijenhuis at the end thereof, for example similar to that of Coslovi, so as to provide operator safety during inspecting the load containers on the railcars.

In Coath, a steering mechanism in the form of a pivot is provided, and it would have been obvious to one skilled in the art to include a steering mechanism, similar to

that taught by Coath, in the structure of Nijenhuis so as to allow the wagon to negotiate track curves.

Regarding the instant claimed positioning system providing vertical and horizontal adjustment, as recited in instant claim 15, consider the positioning system of Nijenhuis, as modified, which includes the steering mechanism in the form of a horizontal pivot, similar to that of Coath, for horizontal adjustment and adjustable suspension system 17 for vertical adjustment.

Regarding the instant claimed intended uses, i.e. for permitting pedestrian traffic, providing pedestrian safety, and for providing access to vehicles running on a second track, note that since the structure of Nijenhuis, as modified, is capable of the instant claimed intended uses, the instant claimed intended use limitations are considered met.

Ground B - Claims 19 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Fowler (US 2,190,708).

Regarding the instant claimed extendable ramp, as recited in instant claim 19, consider the extendable ram of Fowler. In view of Fowler, it would have been obvious to one skilled in the art to also include extendable ramps, similar to that of Fowler, on the structure of Nijenhuis so as to allow the platform to bridge gaps in situations where a permanent platform, similar to that shown in Figure 2 of Fowler, is located at a distance from the traveling platform.

Regarding the instant claimed railings, as recited in instant claims 22-23, consider Figure 5 of Fowler; wherein, the ramps of Nijenhuis, as modified, are positioned vertically as railings as required by the instant claims.

Ground C - Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Hogue (US 4,224,880).

Regarding the instant claimed platform including planks, as recited in instant claim 20, consider railcar floor of Hogue, which is formed by planks. In view of Hogue, it would have been obvious to one skilled in the art to form the platform (floor) structure of Nijenhuis by using planks, in a manner similar to that taught by Hogue, so as to achieve the expected advantages thereof.

Ground D - Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Farmer (US 1,980,329).

Regarding the instant claimed braking system, as recited in instant claim 25, it is noted that Nijenhuis does not show a braking system; however, braking system for use in a rail traveling structure is well known. Note for example, the rail wheel brake system shown in Farmer. Therefore, it would have been obvious to one skilled in the art to include a braking system, as for example shown in Farmer, in the structure of Nijenhuis so as to perform the expected braking function thereof.

(10) Response to Argument

Regarding Applicant's argument that the structure of Nijenhuis is designed so as to be supported by support structures 11 at the permanent platform instead of being self-supporting and independent from the permanent platform for maintaining the same level, as claimed in claim 15, note that to meet such limitation of the instant claim 15, the prior art structure is only required to be capable of self-supporting and independent from a permanent platform for maintaining the same level. In the instant case, note lines 35-44, column 6 of Nijenhuis; wherein, suspension system 17 of railway wagon 6 is configured to lift portable platform 14 to a certain height before railway wagon 6 comes to a stop at a permanent platform. Accordingly, Nijenhuis does teach the capability of self-supporting and independent from a permanent platform by using suspension system 17 to lift portable platform 14 to a certain height for some duration before portable platform 14 is lowered onto support 11 of the permanent platform.

Further it is noted in the third paragraph on page 8 of the appeal brief, Appellant acknowledges "Nijenhuis arguably discloses a portable platform 14 having an uppermost surface 15 that can be maintained at a same level relative to permanent platforms 4,5," and thus Appellant's argument appears to further support the examiner's ground of rejection that the structure of Nijenhuis is capable of the function as claimed. On the other hand, in the latter part of the third paragraph on page 8 of the brief, Appellant argues "Nijenhuis clearly does not teach that the portable platform is self-supporting and independent from the permanent platform for maintaining the same level to the permanent platform 4, 5, as contemplated in the subject matter of claim 15." In

the instant case, it is noted that the structure of Nijenhuis may not be designed specifically for use as claimed; however, since the prior art structure is capable of the instant claimed intended use, the instant claimed intended use limitation is considered met.

Regarding Appellant's argument that suspension system 17 of Nijenhuis is not capable of maintaining the portable platform at the same level of the permanent platform as the load on the portable platform varies during loading/unloading, note that this argument is not deemed relevant to the limitation of the instant claims because the claims do not have any limitation that associates maintaining the same level or fixed height of the portable platform during loading/unloading. On the other hand, note that if the loading/unloading is associated with very light loads, such as cotton materials, on the railway wagon 6 of Nijenhuis, one skilled in the art should not expect the weight of such very light loads would depress suspension system 17 of Nijenhuis to any noticeable extent.

Regarding Appellant's argument "the Examiner's reliance on Nijenhuis as 'inherently' teaching a portable platform is self-supporting and independent from the permanent platform for maintaining the same level is wholly misplaced", note that the examiner does not insist that the structure of Nijenhuis is specifically designed for use as claimed, but rather the above grounds of rejection rest only on the inherency or at least the obvious capability of the prior art structure to be used or operated as in accordance with the intended use or operation as set forth in the claims.

As to Appellant's argument directed to the positioning system of the instant claimed invention being provided for both vertical and horizontal adjustments of the portable platform to maintain the same level, note that vertically adjustable suspension 17 of Nijenhuis in combination with the horizontal pivot providing horizontal adjustment capability of Coath, as described in the above ground of rejection, obviously provide or constitute a positioning system that is capable of both vertical and horizontal adjustments of the portable platform as broadly claimed. As to Appellant's argument that horizontal adjustments using the horizontal pivot of Coath or of Nijenhuis, as modified, cannot occur, note that since the horizontal pivot of Coath or of Nijenhuis, as modified, allows the truck or wheel assembly to freely rotate horizontally relative to the railway car platform, a horizontal adjustment can certainly be made in many ways, such as using an external equipment to manipulate the horizontal orientation of the car platform relative to the truck assembly, or using a curve track entry into a station or a turntable under the truck assembly to manipulate the horizontal orientation of the truck relative to the car platform.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mark Le
/Mark Le/

Conferees:
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